

**Barbara A. Schermerhorn**  
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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IN RE MICHAEL WAYNE  
VANNORDSTRAND, also known as  
Mike Wayne Vannordstrand,

Debtor.

BAP No.    KS-05-091

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MICHAEL WAYNE  
VANNORDSTRAND,

Appellant,

v.

JAN M. HAMILTON, Trustee,

Appellee.

Bankr. No. 02-40431-13  
Chapter 13

ORDER AND JUDGMENT\*

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Appeal from the United States Bankruptcy Court  
for the District of Kansas

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Before CLARK, CORNISH, and TALLMAN<sup>1</sup>, Bankruptcy Judges.

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CLARK, Bankruptcy Judge.

Debtor Michael Vannordstrand (“Debtor”) appeals the bankruptcy court’s  
“Order Granting Trustee’s Motion for Turnover of Inheritance,” entered on  
August 19, 2005. We affirm.

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\* This order and judgment is not binding precedent, except under the  
doctrines of law of the case, res judicata, and collateral estoppel. 10th Cir. BAP  
L.R. 8018-6(a).

<sup>1</sup> Honorable Howard R. Tallman, United States Bankruptcy Judge, United  
States Bankruptcy Court for the District of Colorado, sitting by designation.

## **I. BACKGROUND**

The facts giving rise to this appeal are uncontested. Debtor filed for Chapter 13 relief on March 1, 2002. His proposed plan was approved by confirmation order entered on June 20, 2002. Debtor's plan provides for delayed vesting of estate property in Debtor until dismissal or discharge. In February 2004, while still making payments under the plan, Debtor received approximately \$40,000 in an inheritance from his aunt. Debtor subsequently disclosed the inheritance to the Trustee, but did not seek to exempt it. The Trustee filed a motion for turnover of the inheritance funds on March 29, 2005, to which Debtor objected. Following a hearing, the bankruptcy court entered an order on August 19, 2005, granting the Trustee's motion. Debtor timely filed his notice of appeal from that Order on September 16, 2005, pursuant to an order extending the time to appeal.

## **II. ISSUE AND STANDARD OF REVIEW**

The single issue on appeal is whether the inheritance monies belong to the Debtor, or are instead property of his estate. Since the facts are undisputed, this issue presents only a legal question, which is reviewed by this Court *de novo*.<sup>2</sup>

## **III. DISCUSSION**

Debtor contends that the inheritance he received is not estate property under 11 U.S.C. § 541(a)(5) because it was neither owned by him at the commencement of his case, nor obtained by him within 180 days of the filing of his petition. If this were a Chapter 7 proceeding, Debtor would be correct. However, in Chapter 13 proceedings, § 1306(a)(1) broadens the definition of estate property to include "all property of the kind specified in [§ 541] that the debtor acquires after the commencement of the case but *before the case is closed, dismissed, or converted*" (emphasis added). Debtor does not contend that, at the

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<sup>2</sup> *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

time that he received the inheritance, his case had been closed, dismissed, or converted.

However, Debtor contends that literal application of § 1306 would be “absurd,” and would require turnover of property received in excess of five years after filing of the petition. He relies on *In re Richardson*<sup>3</sup> for the proposition that property obtained more than 180 days after commencement of a Chapter 13 case is “not property of the estate by the plain provisions of 11 U.S.C. § 541(a) . . . .”<sup>4</sup> Thus, Debtor essentially contends that § 541 overrides § 1306. However, Debtor misconstrues the *Richardson* decision.

In *Richardson*, the court considered the effect of § 1306(a)(1) on life insurance proceeds paid to Chapter 13 debtors following the death of their son. The proceeds were received fourteen months after the filing of debtors’ petition, and ten months after the confirmation order had been entered.<sup>5</sup> The court determined that the proceeds were neither property of the estate nor disposable income payable through the plan. However, that conclusion was not based on § 541(a). Instead, the court concluded, pursuant to 11 U.S.C. § 1327(b), that ownership of all estate property not designated for use in the plan had vested in the debtors upon confirmation of the plan.

A number of cases within the Tenth Circuit have considered “ownership” of property in a Chapter 13 context, and have reached various conclusions. The issue has not been directly addressed by the Tenth Circuit Court of Appeals, and has not been addressed at all by the Tenth Circuit BAP. Universally, and contrary

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<sup>3</sup> 283 B.R. 783 (Bankr. D. Kan. 2002).

<sup>4</sup> Brief of Appellant at 7.

<sup>5</sup> Unlike the Debtor herein, the debtors in *Richardson* claimed an exemption in the proceeds. Although no objection to the exemption was made, the court ruled that the exemption was improper because exemptions apply only to property of the debtors’ estate, which it ruled the insurance proceeds were not.

to the present Debtor's contention, the cases agree that § 1306 modifies the § 541 time period in Chapter 13 cases.<sup>6</sup> However, courts disagree regarding § 1327(b)'s impact on § 1306(a)(1). Section 1327(b) provides that, "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." The disputed issue is whether or not the "vesting" of estate property in the debtor acts to terminate § 1306's inclusion of post-petition acquired property in the estate.

This Court need not enter this debate, since the Debtor's plan specifically delays vesting, stating that "[p]roperty of the estate shall vest in the debtor upon discharge hereunder."<sup>7</sup> It was this provision upon which the bankruptcy court based its decision, stating, "because the Debtor's own plan and confirmation order clearly provide for delayed vesting, the Court finds that the inheritance is now property of the estate."<sup>8</sup> Since § 1327(b) specifically allows a plan to provide for different vesting, and the plan in this case does so, vesting had not yet occurred when Debtor obtained the inheritance. Therefore, this Court may affirm the bankruptcy court without deciding whether vesting under § 1327(b) is equivalent to ownership. As noted by the bankruptcy court, Debtor "bargained for" the ability "to cut off post-petition collection efforts against him for post-petition

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<sup>6</sup> See, e.g., *In re Brensing*, 337 B.R. 376, 383 (Bankr. D. Kan. 2006); *In re Johnson*, 335 B.R. 805, 806 (Bankr. W.D. Tenn. 2006); *In re Drew*, 325 B.R. 765, 770 (Bankr. N.D. Ill. 2005); *Montclair Prop. Owners Ass'n, Inc. v. Reynard (In re Reynard)*, 250 B.R. 241, 245 (Bankr. E.D. Va. 2000); *In re Solis*, 137 B.R. 121, 126 (Bankr. S.D.N.Y. 1992).

<sup>7</sup> Chapter 13 Debtor's Plan at 2, *in* Appendix of Appellant at 29. Similarly, though somewhat inartfully, the Order Confirming Plan at ¶ 10 provides that "[a]fter approval of the Trustee's Final Report and Account by the Court, all property of the bankruptcy estate which is not proposed or reasonably contemplated to be distributable under the Plan, shall revert in the debtor following dismissal or discharge." *Id.* at 31.

<sup>8</sup> Transcript of Oral Proceedings *in* Addendum to Brief of Appellant at 59, 62-63.

debts by retaining all property by the estate.”<sup>9</sup> In so doing, he also eliminated any argument he may have had that § 1327(b) modifies § 1306(a)(1).

#### **IV. CONCLUSION**

Since Debtor’s case had not been closed, dismissed, or converted when he received the inheritance, that money is property of his estate. Therefore, the bankruptcy court’s turnover order is affirmed.

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<sup>9</sup> *Id.* at 62.